Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of The Nebraska Central Telephone Company Petition for Waiver of the Requirement for Local Exchange Carriers to Verify Inbound Requests of Customers Who Want to Change to an Affiliated Interexchange Carrier	)	CC Docket No. 94-129

TO: The Commission

PETITION FOR WAIVER

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SUMMARY

The Nebraska Central Telephone Company (NCTC) requests a waiver of the requirement for a local exchange carrier (LEC) to verify inbound carrier change requests when customers seek to switch to the LEC's interexchange carrier (IXC) affiliate. NCTC and its IXC affiliate, Nebraska Central Telecom, Inc., do not slam customers and do not act anticompetitively. In this Petition for Waiver, NCTC shows that the verification requirement: (a) imposes new costs on NCTC, Nebraska Central Telecom and their customers; and (b) has an anticompetitive effect on Nebraska Central Telecom. By comparison, without the verification requirement: (a) customers will not be subject to slamming and NCTC will not act anticompetitively; (b) NCTC will be able to process its customers' change requests without there being an extra cost for requests to change to Nebraska Central Telecom; (c) Nebraska Central Telecom will be on a par with its competitors vis-à-vis NCTC's processing of inbound carrier change requests; and (d) the Commission's goals of: (i) protecting customers; (ii) encouraging competition in the IXC market and increasing the choices available to consumers; and (iii) minimizing regulatory burdens on small carriers, will be realized.

For good cause shown, the Commission should grant a waiver in these special circumstances.

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PETITION FOR WAIVER

The Nebraska Central Telephone Company (NCTC), by its attorney, and pursuant to Section 1.3 of the Commission's Rules, requests a waiver of the requirement for a local exchange carrier (LEC) to verify inbound carrier change requests when customers seek to switch to the LEC's interexchange carrier (IXC) affiliate. This requirement appears in paragraph 91 of the Order in the captioned proceeding, as modified by the Clarification Order.[1] NCTC (a LEC) and its IXC affiliate, Nebraska Central

[1] Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, para. 91 (rel. Mar. 18, 2003) [hereinafter Order], clarified by Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order]. NCTC does not request a waiver of the requirement for a LEC to verify an inbound request from a customer that wants to change from one LEC to another LEC.

Telecom, Inc. (Nebraska Central Telecom), do not slam customers. This new verification requirement therefore would impose unwarranted costs on NCTC, Nebraska Central Telecom, and their customers. There is good cause to grant a waiver to NCTC in these special circumstances.[2]

I. BACKGROUND

A. NCTC and Nebraska Central Telecom

NCTC is a small LEC that has been serving rural areas of Nebraska for decades. Long distance service is provided by Nebraska Central Telecom, which began to provide service in March 2001. Nebraska Central Telecom has had some business success, and wants to ensure that, at a minimum, it can maintain a consistent penetration level as everyday churn occurs.

B. Inbound Requests to Change IXCs - Before 2003

For many years, the Commission's rules did not require LECs to verify carrier changes that result from a customer contacting a LEC directly (aka "inbound carrier change requests"). Such

[2] A good argument can be made that the new verification requirement is not in effect because the text of the slamming rules does not require a LEC, as an executing carrier, to verify carrier change requests. This Petition for Waiver, however, is being filed out of an abundance of caution. For the sake of simplicity, this Petition refers to the verification requirement as definitely applying to NCTC.

"carrier changes" include customers calling the LEC and asking the LEC to change their IXC. Even in the Second Report and Order released in 1998, the Commission specifically declined to alter its rules in this regard.[3]

Thus, suppose a customer calls a LEC named "LocalTelco." Prior to 2003, LocalTelco could change the customer's IXC without, for example, using third-party verification (TPV) (where the customer may be transferred to an independent party who confirms the change request and verifies the identity of the customer) or a written letter of agency (LOA) (which confirms the change request). This is true regardless of whether the IXC in question is affiliated with LocalTelco. In other words, no verification is required for inbound requests to a LEC from a customer who wants to switch IXCs. That is, the LEC did not need to use an LOA or TPV, for example, to verify the customer's request. Then, after the LEC informed the new IXC about the customer's switch, even the IXC did not need to verify the customer's request.

[3] See Order para. 91.

C. Inbound Requests to Change IXCs - Pursuant to the New Verification Requirement

In the Order, the Commission modified this requirement. In paragraph 91, the Commission said that it would now "require verification of carrier change requests that occur when a customer initiates a call to a LEC."[4]

Verizon, BellSouth, SBC and Qwest met with Commission staff, and requested the Commission to clarify that the requirement to verify inbound carrier change requests did not apply when, for example, a customer wants to change to an unaffiliated IXC.[5] The Commission agreed, and released the Clarification Order. There, the Commission explained that paragraph 91 of the Order does not apply when a customer wants to change to an IXC that is not affiliated with the LEC.[6]

In other words, suppose LocalTelco has an affiliate that is an IXC. If a customer were to call LocalTelco and ask to switch to LocalTelco's IXC affiliate, then pursuant to the Order and the Clarification Order, LocalTelco would need to use one of the Commission's verification procedures, such as an LOA or TPV, to verify that customer's IXC selection. (This requirement was not

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[4] Id.

[5] Ex Parte Letter from Marie Breslin, Verizon, Mary Henze, BellSouth, Mike Alarcon, SBC, and Kathy Krause, Qwest, to Marlene Dortch, FCC, Docket No. 94-129, dated May 2, 2003.

[6] Clarification Order para. 5.

affected by the Clarification Order.) But if the same customer were to call LocalTelco and ask to switch to an unaffiliated IXC, LocalTelco could make the change without using any Commission-sanctioned verification procedure;[7] the unaffiliated IXC would also not need to perform any verification procedure. The IXC change would happen just as soon as LocalTelco makes the change.

D. Related Proceedings

NCTC and many other small incumbent local exchange carriers (ILECs) believe that this new verification requirement is unnecessary and anticompetitive, as discussed further below. A group of small ILECs, including NCTC, filed a Petition for Reconsideration requesting the Commission to eliminate the requirement.[8] These ILECs also requested the Commission to stay the requirement pending consideration of the Petition for Reconsideration.[9] Several of the ILECs also have filed Comments

[7] The Clarification Order confirms that no verification is required in the latter situation. Id.

[8] Rural ILECs Petition for Reconsideration, dated May 19, 2003; Rural ILECs Motion for Leave to File Supplement to Petition for Reconsideration, dated May 30, 2003; Rural ILECs Supplement to Petition for Reconsideration, dated May 30, 2003; Nebraska LECs Reply, dated August 8, 2003 (replying to oppositions and comments on petition).

[9] Rural ILECs Emergency Request for Partial Stay, dated May 22, 2003; Rural ILECs Motion for Leave to File Supplement to Emergency Request for Partial Stay, dated May 30, 2003; Rural ILECs Supplement to Emergency Request for Partial Stay, dated May

on Information Collections demonstrating that the Commission has not fully considered the burden for complying with the verification requirement.[10]

This Petition for Waiver is being filed as an alternative to these other filings. That is, if the Commission were to grant a permanent waiver, NCTC would not need to pursue the Petition for Reconsideration. Conversely, if the Commission were to eliminate the verification requirement, NCTC would not need to pursue this Petition for Waiver.

II. NCTC AND NEBRASKA CENTRAL TELECOM DO NOT SLAM CUSTOMERS

The purpose of all of the Commission's slamming rules is to deter slamming. NCTC and Nebraska Central Telecom have spotless records in this regard. Simply put: They don't slam customers -- despite the hundreds of customers that request Nebraska Central Telecom's service each year and the hundreds of IXC change requests that NCTC processes each year. Their spotless records are evidenced by:

* The enclosed Declaration of Andrew D. Jader, Vice President of Administration, NCTC, stating that he has no knowledge of NCTC ever slamming a customer. (Attachment A.)

30, 2003.

[10] Rural ILECs Comments on Information Collections, dated May 28, 2003; Nebraska ILECs Comments on Information Collections, dated August 1, 2003.

* The enclosed letter from the Nebraska Public Service Commission stating that there are no slamming complaints on file against NCTC and Nebraska Central Telecom. (Attachment B.)

* The slamming reports filed at the FCC by NCTC and Nebraska Central Telecom, which show that the only slamming complaints handled by either company in the past few years involved unauthorized carrier change requests submitted by unaffiliated IXCs.[11]

Also, a search of LEXIS shows that there are no FCC slamming orders involving NCTC or Nebraska Central Telecom.[12]

Many factors contribute to these spotless records. Nebraska Central Telecom does not use outside telemarketers. By comparison, many slamming complaints received by the FCC result from independent telemarketing operations.[13] In addition, customers of rural ILECs, such as NCTC, receive, and expect to

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[11] Some of the slamming reports may have non-zero numbers in "Block 3: Complaints That You Received or Resolved Alleging That You Slammed a Customer." The non-zero numbers in Block 3 refer only to the complaints against unaffiliated carriers, as listed in "Block 4: Complaints That You Received Alleging That Another Carrier Slammed a Customer." In other words, neither NCTC nor Nebraska Central Telecom caused any slams referenced in Blocks 3 and 4.

[12] Search of LEXIS, FCC file, Sept. 22, 2003.

[13] E.g., AT&T v. Winback & Conserve Program, Memorandum Opinion and Order, 16 FCC Rcd. 16,074 (2001) (used independent telemarketers who slammed customers); Talk America, Order, 18 FCC Rcd. 6263 (2003) (used outside telemarketing agent); FCC Imposes $680,000 Forfeiture Against Vista Services Corporation for Slamming, News Release, File No. EB-99-10, 2000 FCC LEXIS 5604 (rel. Oct. 23, 2000) (used independent contractors for telemarketing).

receive, high quality service from local customer service representatives. NCTC's employees live and work in the communities where NCTC provides service. The employees take pride in providing quality service, and strive to demonstrate the utmost in accuracy and integrity as they execute the requests of their neighbors. Furthermore, the customer service representatives are not penalized for taking their time in responding to questions and other requests from their customers, who often are their neighbors, friends and relatives. In short, their small-town culture is manifested in careful customer care.

NCTC and Nebraska Central Telecom's spotless records in processing carrier change requests can be used to predict that they will continue to accurately process IXC change requests in the future. The Commission has often looked to past behavior to predict future actions. For example, when the Commission considered Section 271 applications, the Commission stated that the "'past and present behavior of the [Bell Operating Company] applicant' would be 'highly relevant' because that behavior provides 'the best indicator of whether [the applicant] will carry out the requested authorization in compliance with the requirements of Section 272.'"[14] Additionally, in determining whether to grant broadcast and other wireless licenses, the Commission frequently looks to past performance to predict future behavior.[15] For the same reasons, the Commission can look at NCTC's and Nebraska Central Telecom's spotless records in processing carrier change requests, and conclude that the likelihood of their having spotless records in the future is almost a certainty.

In sum, NCTC has shown that the Commission's goal of deterring slamming was realized by NCTC even before the Commission adopted the new verification requirement. And NCTC's past record can be used to predict that it will not slam customers in the future.

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[14] Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd. 20,599 para. 321 (1998).

[15] See National Black Media Coalition v. FCC, 775 F.2d 342, 347 (D.C. Cir. 1985); Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, Report and Order, 9 FCC Rcd. 6513 (1994) (cellular licensee eligible for renewal expectancy based on substantial service in the past); Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 2834 (1993) ("primary rationale for granting a renewal expectancy is that the licensee's record of past performance is the best available evidence for predicting its future performance").

III. NCTC AND NEBRASKA CENTRAL TELECOM DO NOT ACT ANTICOMPETITIVELY

While the general purpose of the slamming rules is to deter slamming, the specific purpose of the new verification requirement is to prevent anticompetitive behavior by LECs. According to the Commission, the LECs' affiliates are just beginning to provide interexchange service and allegedly now have incentive to switch customers to the LECs' IXC affiliates.[16] But that is not a concern here. Independent LECs have been permitted to provide interexchange service for a long time, and Nebraska Central Telecom has been providing service for more than two years. In that time, no customer has complained that their long distance service was switched to Nebraska Central Telecom without the customer's consent. This fact is supported by:

* NCTC's and Nebraska Central Telecom's spotless records in processing carrier change requests, as discussed above.

* The lack of complaints from competing IXCs. NCTC participated in the Rural ILECs' Petition for Reconsideration which addresses the verification requirement and the Commission's concerns about LECs acting anticompetitively in the future. AT&T and WorldCom responded to the Petition for Reconsideration. If they had evidence of NCTC acting anticompetitively, AT&T and WorldCom surely would have mentioned it in their responses. But AT&T and WorldCom said nothing on

[16] Order para. 91.

that topic.[17] Their silence is evidence that NCTC has not acted anticompetitively.

NCTC's record of not acting anticompetitively in the past can be used to predict that it will not act anticompetitively in the future, just as NCTC's spotless carrier change record can be used to predict that it will not slam customers in the future. Thus, the two key goals of the slamming rules and the verification requirement – to deter slamming and to prevent LECs from acting anticompetitively – have been realized in the past, and would readily be realized by NCTC in the future, without the imposition of the new verification requirement.

IV. THE VERIFICATION REQUIREMENT IMPOSES UNNECESSARY COSTS

Before the Commission released the Order, NCTC did not verify inbound carrier change requests using the procedures in the Commission's verification rules for submitting carriers – for two reasons. First, NCTC acts as an executing carrier when it processes IXC change requests. The Commission's verification rules did not require NCTC, as an executing carrier, to verify the change requests.[18] Second, NCTC does not have any history of slamming, so additional verification was not necessary.

[17] AT&T Opposition at 4-5, dated July 29, 2003; WorldCom Opposition at 7-9, dated July 29, 2003.

[18] 47 C.F.R. § 64.1100.

To comply with the Commission's new verification requirement, NCTC needs to use one of the Commission's verification procedures when it processes inbound carrier change requests only for changes to Nebraska Central Telecom. Thus, when NCTC switches customers to Nebraska Central Telecom, NCTC will need to bear a cost that it does not bear when it switches customers to other IXCs.

NCTC's preferred verification method is an LOA. Most small LEC-affiliated IXCs use LOAs, not third party verification (TPV) – so small LECs, such as NCTC, likely would use LOAs as well. The LOAs permit the IXC, or the LEC, to retain control of the interaction with the customer, thereby ensuring that no mistakes occur in the carrier change process. And, as shown above, the LOA process has contributed to Nebraska Central Telecom's spotless record.

NCTC estimates that it may process about 1300 inbound carrier change requests each year for its IXC affiliate. The use of LOAs would cost about $16,000 per year.

NCTC could use the PIC change charge to pass on this cost to its customers. In that case, the PIC change charge would greatly exceed the safe harbor amount of $5.[19] This higher PIC change

[19] See Presubscribed Interexchange Carrier Charges, Order and Notice of Proposed Rulemaking, 17 FCC Rcd. 5568 (2002) [hereinafter PIC Change Charge NPRM].

charge would apply only to customers switching to Nebraska Central Telecom – not to customers switching to unaffiliated IXCs.

Instead of requiring customers to pay a higher PIC change charge, Nebraska Central Telecom could issue credits to its new customers in the amount of the increased PIC change charge. Nebraska Central Telecom then would need to pay an additional $16,000 per year to obtain new customers. This approach is unacceptable for two reasons. First, other IXCs will not incur this cost when they obtain new customers in NCTC's service area. Second, the IXC affiliates of small LECs typically operate on small profit margins. These small IXCs pay comparatively high per-minute charges to wholesalers due to the IXCs' low call volumes. And the IXCs' administrative costs are likely to be higher per customer because there are fewer customers. Nebraska Central Telecom is no exception. The additional cost of compliance with the verification requirement cannot be borne as readily by Nebraska Central Telecom as it may readily be borne by much larger IXCs.

The bottom line is that regardless of whether Nebraska Central Telecom or the customers bear the costs directly, the verification requirement places a burden on Nebraska Central Telecom and its customers that is not borne by other IXCs and their customers. As such, the verification requirement is unduly burdensome and anticompetitive.

Of course, NCTC does not have to use LOAs. It could use another verification method, such as TPV. NCTC does not foresee any benefit to using TPV, so it has not fully investigated the cost of using TPV. Nevertheless, NCTC is aware that the Commission has estimated the cost of using TPV to be approximately $2.625 per customer change.[20] If NCTC were to process 1300 inbound change requests each year for customers who want to switch to Nebraska Central Telecom, the total cost could be about $3,412. Because NCTC would have call volumes much lower than that offered by larger IXCs, NCTC assumes that the actual annual cost for TPV could be even higher due to higher per call charges and higher fixed monthly charges for its lower call volumes. No matter what the exact cost may be, the use of TPV would still be a cost that NCTC and Nebraska Central Telecom would bear which would not be borne by other IXCs and their customers. Thus, the use of TPV would be unduly burdensome and anticompetitive, just as the LEC's use of LOAs for inbound carrier change requests is unduly burdensome and anticompetitive.

[20] Supporting Statement, FCC Paperwork Reduction Act Submission to the Office of Management and Budget, OMB Control No. 3060–787, at 19, dated June 11, 2003.

V. THE VERIFICATION REQUIREMENT IS ANTICOMPETITIVE

Besides imposing new costs, the verification requirement is anticompetitive in its implementation. Consider the procedure for NCTC to use an LOA to verify inbound requests from customers who want to switch to Nebraska Central Telecom. NCTC would need to mail the LOA to the customer; the customer would review it, sign it and mail the LOA back to NCTC; and then NCTC would make the carrier change. Thus, the verification of a carrier change request may not be completed until a week or so after the customer calls NCTC. By comparison, if a customer wanted to switch to an unaffiliated IXC, the change could take place immediately because NCTC would not need to verify the request to switch to that IXC.

This difference in the processing of carrier change requests for the affiliated IXC versus unaffiliated IXCs is highlighted by the following hypothetical conversations between an NCTC customer and a customer service representative (CSR).

SCENARIO 1

Customer:	"Please change my long distance company to BIG-IXC."
CSR:	"OK. . . . The change will take effect within 24 hours."

SCENARIO 2

Customer: "Please change my long distance company to your long distance affiliate."

CSR: "OK. I would be happy to help you with that. First, I will mail a letter of agency to you. You'll need to review it, sign it, and mail it back to us. After we receive the completed letter of agency, we'll be happy to make the change. So, in about a week, you'll be switched to our long distance affiliate."

Customer: "You've got to be kidding! I want to get rid of my current long distance company right away. Is there any way I can do that?"

CSR: "Unfortunately, if you really want to switch to our long distance affiliate, the regulatory paperwork will take about a week to turn around. But if it's more important that you switch carriers right away, we could switch you to one of the other long distance companies."

Thus, the verification requirement makes it clearly more difficult for a customer to change to Nebraska Central Telecom – thereby harming competition.[21] With Nebraska Central Telecom being relatively new to the IXC marketplace, now is not the time

[21] See PIC Change Charge NPRM para. 12 (making carrier changes easy for consumers helps spur competition).

for Nebraska Central Telecom to face unnecessary regulatory barriers to its continued success as an IXC.

VI. NCTC MEETS THE COMMISSION'S STANDARDS FOR GRANTING WAIVERS

Pursuant to Section 1.3 of the Commission's Rules, the Commission can grant a waiver for good cause shown. Here, NCTC has shown that the requirement to verify inbound carrier change requests for changes to its IXC affiliate is not necessary to deter slamming. Yet, verification would impose unnecessary costs, and would present a barrier to Nebraska Central Telecom's ability to maintain its current penetration level. Thus, there is good cause to grant a waiver.

A waiver also is supported by the particular facts of this case that make strict compliance inconsistent with the public interest.[22] As shown above, strict compliance with the verification requirement would not only impose unnecessary burdens on NCTC and Nebraska Central Telecom, but it would also be a barrier to Nebraska Central Telecom's ability to retain its market penetration. Also, NCTC could increase its PIC change charge, but the Commission has previously acknowledged that higher PIC change charges are a barrier to competitive entry and

[22] See Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

the exercise of customer choice.[23] Thus, a higher PIC change charge is inconsistent with the Commission's goals of spurring competition in the IXC market and increasing the choices available to consumers – especially in rural areas.[24] For these reasons, the verification requirement is not in the public interest.

In deciding whether to grant a waiver, the Commission may take into account considerations of hardship and equity.[25] Here, the verification requirement would impose costs on NCTC, Nebraska Central Telecom and their customers that are not imposed on other IXCs and their customers. Thus, the verification requirement is inequitable.

In sum, strict compliance with the verification requirement would impose financial burdens, be inequitable and anticompetitive – contrary to the Commission's goals in fostering

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[23] PIC Change Charge NPRM para. 3.

[24] See, e.g., Multi-Association Group(MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Dockets Nos. 98-77 and 98-166, 16 FCC Rcd. 19,613 para. 6 (2001) (not wanting to discourage long distance competition or limit consumer choice in rural areas); Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Notice of Proposed Rulemaking, 17 FCC Rcd. 9916 para. 22 (2002).

[25] WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

competition in interexchange service in rural areas. By comparison, without the verification requirement, customers would be well-served by the careful customer service provided by small ILECs and their IXC affiliates. A waiver is appropriate in these circumstances.

VII. A WAIVER IS CONSISTENT WITH COMMISSION PRECEDENT

The Commission "is committed to continuing the examination of [its] rules and processes to ensure that small telephone companies are provided with appropriate regulatory flexibility."[26] In many instances, the Commission has waived its rules for small companies. For example, the Commission has waived its rules so that small LECs would: (a) not need to implement FLEX ANI because the cost would be burdensome;[27] (b) not need to implement telephone number portability in the 100

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[26] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 AND 98-166, 16 FCC Rcd. 19,613, 19,729 (2001) (statement of Chairman Powell).

[27] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order, 13 FCC Rcd. 4998 (Com. Car. Bur. 1998).

largest MSAs until they receive a bona fide request;[28] and (c) have additional time to implement network changes to support four-digit carrier identification codes.[29] Grant of a waiver here would be consistent with this "longstanding sensitivity to the concerns of small companies."[30]

Grant of a waiver also is supported by previous Commission decisions granting waivers of rules that were unnecessary and costly. For example, the Commission has often granted waivers of the price cap all-or-nothing rule, so that small LECs acquiring additional exchanges could remain subject to rate-of-return regulation. In those situations, the Commission determined that the goal of the all-or-nothing rule (e.g., to prevent improper cost-shifting among affiliates) would be achieved without the imposition of the rule, whereas the imposition of the all-or-nothing rule would impose unnecessary costs on the small LECs.[31]

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[28] Telephone Number Portability, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 7236 (1997).

[29] See Administration of the North American Numbering Plan Carrier Identification Codes (CICs), Declaratory Ruling, 13 FCC Rcd. 8687 (Com. Car. Bur. 1998).

[30] National Exchange Carrier Association, et al., Joint Petition for Waiver of Sections 36.611(a), 36.631(c) and 36.641(b)(3) of the Commission's Rules, Order, 5 FCC Rcd. 173 para. 21 (Com. Car. Bur. 1989).

[31] E.g., Nemont Telephone Cooperative, Inc., Order, 18 FCC Rcd. 838 (Wireline Comp. Bur. 2003) (granting a waiver of the all-or-nothing rule because the problems it was meant to prevent did not exist, and imposition of the rule would impose regulations that

As another example, the Commission granted waivers of its rules concerning the minimum payloads for transmitters. In those situations, the purpose of the rule (i.e., to minimize frequency congestion) would be realized by the affected small LECs without application of the rule, because there was no prospect of congestion. By comparison, the strict application of the rule would increase the cost of providing service in a remote area.[32] Similarly, in the case at hand, the goal of the slamming rules (i.e., to deter slamming) will be met without the imposition of the new verification requirement, whereas the application of the rule would impose unnecessary costs on NCTC, its affiliated IXC and their customers. Just as the Commission waived the price cap rule and the transmitter payload rule for other carriers, the Commission should grant a waiver here.

VIII. A WAIVER IS CONSISTENT WITH THE ACT

Furthermore, nothing in the Communications Act of 1934, as amended (the Act), would prohibit the grant of a waiver. Section 258 of the Act states that carriers must comply with the

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were not suitable for a small LEC); see also All West Communications, Inc., Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Hanksville Telecom, Inc., Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc. and Qwest Corp., Order, 16 FCC Rcd. 4697 (Com. Car. Bur. 2001).

[32] E.g., Wilderness Valley Telephone Co., Order, 15 FCC Rcd. 11,751 (Wireless Tel. Bur. 2000).

subscriber change verification procedures prescribed by the Commission. The statute does not state that LECs must verify inbound IXC change requests. Indeed, the Commission recently affirmed that LECs do not need to verify inbound carrier change requests for unaffiliated IXCs.[33] Thus, the Act must not require verification of inbound carrier change requests for unaffiliated IXCs. And there surely is no mention in the Act of whether the carriers involved are affiliated or unaffiliated. Thus, just as the Act does not require verification for changes to unaffiliated IXCs, it does not require verification for changes to affiliated IXCs.

A waiver would simply modify the Commission-prescribed procedures for NCTC, and would therefore be consistent with the Act. As stated by the D.C. Circuit, "sound administrative procedure contemplates waivers. . . . [W]ith diligent effort and attention to essentials[,] administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility."[34] Here, customers would remain free from slamming while the Commission uses its administrative flexibility to refrain from imposing unnecessary regulations. And even if NCTC were to slam a customer, NCTC

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[33] Clarification Order para. 5.

[34] WAIT Radio, 418 F.2d at 1159.

would still be required to provide just compensation in accordance with the slamming rules.

The Commission has granted many waivers of the slamming rules, as requested by Bell Companies and other LECs. In those orders, the Commission has specifically noted the terms of Section 258 of the Act, and has explained the Commission's ability to waive its rules, consistent with the Act.[35] There is nothing in the Act that would permit the Commission to grant these waivers to the Bell Companies but prohibit the Commission from granting the waiver requested here. Thus, just as the Commission has waived its slamming rules for other LECs, the Commission may grant a waiver here, consistent with the Act.

IX. THE WAIVER SHOULD BE PERMANENT

NCTC requests the Commission to grant the waiver on a permanent basis. Without a waiver, the verification requirement would continue to present unnecessary, inequitable and anticompetitive costs for the foreseeable future. NCTC does not expect any change to its service area, and Nebraska Central

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[35] E.g., 2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Order, DA 03-2745 (Consumer & Govt. Aff. Bur. rel Aug. 27, 2003); Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Order, 16 FCC Rcd. 3646 (Com. Car. Bur. 2001).

Telecom does not expect any change to its penetration level, that would warrant the termination of a waiver anytime in the future.

NCTC is aware that the Commission has required periodic reporting as a condition of granting waivers in other situations. But there would be no need to require NCTC to file periodic reports in this case. If, perchance, a customer were slammed by NCTC, the customer readily could file a complaint with the Nebraska Public Service Commission or, perhaps, the FCC. Thus, there is a built-in mechanism for regulatory agencies to monitor NCTC's carrier change activities.

Nevertheless, as a condition for the grant of a permanent waiver, NCTC suggests that it could retain records of customers complaining about slamming (even if such complaints were against unaffiliated IXCs). These records would be made available to the Commission upon request. This requirement would be similar to that imposed in other situations where carriers must retain records and make them available upon request.[36]

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[36] See, e.g., Implementation of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273, 14 FCC Rcd. 15,550 (1998) (upon request by the Commission, carriers must provide copies of contracts for subscriber list information); Aircell, Inc., Order, 14 FCC Rcd. 806 (Wireless Tel. Bur. 1998) ("Cellular licensees providing cellular service to airborne terminals must promptly provide upon request by the Commission any information relating to any complaint of interference.").

X. CONCLUSION

NCTC has shown the following:

1. NCTC is a small, rural ILEC that has been providing local exchange service for decades.

2. NCTC's IXC affiliate, Nebraska Central Telecom, has been providing interexchange service for more than two years.

3. Their small-town culture and values is exhibited in their careful handling of customers requests.

4. Nebraska Central Telecom does not use independent telemarketers.

5. Neither NCTC nor Nebraska Central Telecom has slammed any customers.

6. NCTC has not acted anticompetitively in processing inbound carrier change requests.

7. NCTC's preferred verification method is the letter of agency, just as Nebraska Central Telecom uses letters of agency.

8. The verification requirement:

   a. Imposes new costs on NCTC, Nebraska Central Telecom and their customers.

   b. Has an anticompetitive effect on Nebraska Central Telecom.

9. NCTC's and Nebraska Central Telecom's spotless records can be used to predict that the likelihood of their accurately processing carrier change requests in the future is almost a certainty.

10. Without the verification requirement:

a. Customers will not be subject to slamming and NCTC will not act anticompetitively.

b. NCTC will be able to process customers' change requests without there being an extra cost for requests to change to Nebraska Central Telecom.

c. Nebraska Central Telecom will be on a par with its competitors vis-à-vis NCTC's processing of inbound carrier change requests.

d. The Commission's goals of: (i) protecting customers; (ii) encouraging competition in the IXC market and increasing the choices available to consumers – especially in rural areas; and (iii) minimizing regulatory burdens on small carriers, will be realized.

For good cause shown, NCTC requests the Commission to grant a permanent waiver of the requirement to verify inbound carrier change requests where customers want to switch to NCTC's IXC affiliate.

Respectfully submitted,
THE NEBRASKA CENTRAL TELEPHONE COMPANY

By Susan J Bahr
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Susan J. Bahr
Its Attorney

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P.O. Box 86089
Montgomery Village, MD 20886-6089
Phone: (301) 258-8947

October 10, 2003

ATTACHMENT A

DECLARATION

I, Andrew D. Jader, am the Vice President of Administration for The Nebraska Central Telephone Company. Based on my experience and my review of the records of The Nebraska Central Telephone Company and Nebraska Central Telecom, Inc., I am not aware of The Nebraska Telephone Company or Nebraska Central Telecom, Inc. ever slamming a customer, or of being accused of acting anticompetitively when processing a carrier change request. In any cases where The Nebraska Central Telephone Company may have been named in slamming complaints, unaffiliated interexchange carriers had submitted unauthorized carrier change requests which The Nebraska Central Telephone Company effected as an executing carrier.

Signature Andrew D Jader Date 10/9/03

ATTACHMENT B

Letter from the Nebraska Public Service Commission

Nebraska Public Service Commission

300 The Atrium, 1200 N Street, Lincoln, NE 68508
Post Office Box 94927, Lincoln, NE 68509-4927
Website: www.psc.state.ne.us
Phone: (402) 471-3101
Fax: (402) 471-0254

NEBRASKA CONSUMER HOTLINE:
1-800-526-0017

August 15, 2003

To Whom it May Concern:

This is to serve as verification that The Nebraska Central Telephone Company, a rural local exchange carrier, has no slamming complaints on file with the Nebraska Public Service Commission.

In addition, the long distance subsidiary of The Nebraska Central Telephone Company, namely Nebraska Central Telecom, Inc. dba NCTC Long Distance, has no slamming complaints on file with the Nebraska Public Service Commission.

Sincerely,

Cheryl Elton

Cheryl Elton
Consumer Advocate